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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,724	10/26/2001	Wyatt Allen Huddleston	PF02200NA/10-31	9665
51874	7590	02/21/2006	EXAMINER	
LAW OFFICES OF CHARLES W. BETHARDS, LLP			AVELLINO, JOSEPH E	
P.O. BOX 1622			ART UNIT	PAPER NUMBER
COLLEYVILLE, TX 76034			2143	

DATE MAILED: 02/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/045,724 Examiner Joseph E. Avellino 	Art Unit 2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 07 November 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

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### **DETAILED ACTION**

1. Claims 1-20 are presented for examination; claims 1, 11, and 18 independent.

2. In view of the pre-appeal conference brief filed on November 7, 2005,

PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5, 8, 9, 11-12, 15, and 17-20 are rejected under 35 U.S.C. 102(e) as being anticipated by van Ee et al. (USPN 6,774,813) (hereinafter van Ee).

4. Referring to claim 1, van Ee discloses a method for command brokering on behalf of an intelligent device (i.e. programmable control device 106), comprising the steps of:

defining in a wireless Internet access device (i.e. programming means) a desired function to be performed (i.e. controlling an appliance) (col. 6, lines 1-24);  
style="padding-left: 40px;">identifying the intelligent device and the desired function to a web site 118 having access to control instructions for the intelligent device (col. 6, lines 9-20);  
style="padding-left: 40px;">returning, to the WIAD from the web site, a subset of the control instructions for controlling the intelligent device to perform the desired function (col. 6, lines 9-20); and  
style="padding-left: 40px;">forwarding the subset of the control instructions from the WIAD to the intelligent device to effect the desired function (col. 6, lines 33-35).

5. Referring to claim 2, van Ee discloses the forwarding step comprises forwarding through an infrared communication device (i.e. IR RX/TX) (col. 6, lines 34-35).

6. Referring to claim 3, van Ee discloses forwarding through an RF interface (col. 8, lines 25-30).

7. Referring to claim 5, van Ee discloses the defining step comprises defining through a user keypad entry (col. 6, lines 1-9).

8. Referring to claim 8, van Ee discloses arranging for the web site to have access to the control instructions by pre-programming the control instructions into a memory of the web site (i.e. server with database) (col. 6, lines 10-25).

9. Referring to claim 9, van Ee discloses accessing a server 118 having the control instructions for controlling the intelligent device (col. 6, lines 10-25).

10. Claims 11-13, 15, and 17-20 are rejected for similar reasons as stated above.

***Claim Rejections - 35 USC § 103***

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 4, 6, 7, 14, 16, are rejected under 35 U.S.C. 103(a) as being unpatentable over van Ee in view of Maymudes (USPN 6,748,278).

12. Referring to claim 4, van Ee discloses the invention substantively as described in claim 1. van Ee does not disclose forwarding through ultrasonic communication device. In analogous art, Maymudes discloses another method of brokering on behalf of an intelligent device wherein the forwarding can occur through an ultrasonic communication device (i.e. Bluetooth) (col. 3, lines 20-32). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Maymudes with van Ee since van Ee discloses the invention can be used with a plurality of different devices (102, 104). This would lead one of ordinary skill in the art to determine which other devices can be used for brokering command, eventually finding Maymudes finding a command broker for televisions, stereos, VCR's speakers, microwave ovens, etc (col. 7, lines 40-50).

13. Referring to claim 6 and 7, Tessler discloses the invention substantively as described in claim 1. Tessler does not disclose defining said desired function is made by a measurement by the WIAD. In analogous art, Maymudes discloses another method of brokering on behalf of an intelligent device wherein defining said desired function is made by a measurement by the WIAD (i.e. computer facilitator 202) (col. 5, lines 35-43). Furthermore, since the WIAD is connected to the wireless network, and also the remote controller 204 and controlled device 206 are as well, it is considered that the measurement is done by the wireless communication network as well. It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Maymudes with van Ee since van Ee discloses the invention

can be used with a plurality of different devices (102, 104). This would lead one of ordinary skill in the art to determine which other devices can be used for brokering command, eventually finding Maymudes finding a command broker for televisions, stereos, VCR's speakers, microwave ovens, etc (col. 7, lines 40-50).

14. Claims 14, and 16 are rejected for similar reasons as stated above.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over van Ee in view of Baun et al. (US 2003/0197930) (hereinafter Baun).

15. Tessier discloses the invention substantively as described in claim 1. Tessier does not disclose the intelligent device is a telescope and the defining step comprises determining coordinates based on a position. In analogous art, Baun discloses another method for brokering control which discloses intelligent device is a telescope (e.g. abstract) and the defining step comprises determining coordinates based on a position (p. 8, ¶ 87). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Baun with Tessler since Tessler discloses the invention can be used with a plurality of different devices (102, 104). This would lead one of ordinary skill in the art to determine which other intelligent devices can be used for brokering command, eventually finding Baun finding a command broker for GPS systems for telescopes (col. 7, lines 40-50).

***Response to Arguments***

16. Applicant's arguments filed November 7, 2005 have been fully considered but they are moot in view of the new grounds of rejection.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

17. Applicant employs broad language, which includes the use of word, and phrases, which have broad meanings in the art. In addition, Applicant has not argued any narrower interpretation of the claim language, nor amended the claims significantly enough to construe a narrower meaning to the limitations. As the claims breadth allows multiple interpretations and meanings, which are broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly and as reasonably possible, in determining patentability of the disclosed invention. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993). Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response, and reiterates the need for the Applicant to more clearly and distinctly, define the claimed invention.

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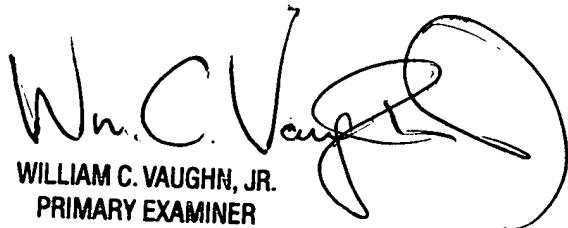
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JEA  
February 7, 2006



WILLIAM C. VAUGHN, JR.  
PRIMARY EXAMINER